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2 **UNITED STATES DISTRICT COURT**

3 **DISTRICT OF NEVADA**

4 \* \* \*

5 V5 Technologies,

6 Plaintiff,

7 v.

8 Switch Ltd., et al.,

9 Defendants.

Case No. 2:17-cv-02349-KJD-BNW

**ORDER**

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11 Before the Court is Defendant's motion to seal. ECF No. 366. Plaintiffs filed an  
12 opposition. ECF No. 369. Defendant's filed a reply. ECF No. 372. At issue are Exhibits 2, 3, 6, 8,  
13 9, 10, 11, 15, 18, 46, 47, 49, 50, 51, 53, 54, 55, 56, 57, 62, 77, 78, 91, 94, 96, 102, 104-106 and  
14 110 to Defendant's Motion for Summary Judgment, Exhibits 1-7 to its Zona Daubert Motion, and  
15 Exhibits 1-7 to its Cole Daubert Motion.

16 First, the Court notes that Plaintiff explained, and Defendant agreed, that there is no such  
17 thing as Exhibits 102, 104, 105, 106 and 110 to Switch's Motion for Summary Judgment. Instead,  
18 Plaintiff explains that what Switch designated as Exhibits 102, 104, 105, and 106 correspond to  
19 Exhibits 1, 3, 4 and 5 to Switch's Zona Daubert motion; Exhibit 110 corresponds to Exhibit 2 in  
20 Switch's Cole Daubert Motion. Thus, the Court will analyze these exhibits by referring to its  
21 corrected designation.

22 Next, the Court notes that the parties sufficiently met and conferred. As a result, the Court  
23 will consider the motion.

24 Switch moves to seal several exhibits filed in support of its Motion for Summary  
25 Judgment, as well as its Zona and Cole Daubert Motions. Switch states that all these exhibits  
26 could be used to tamper with, destroy, or otherwise access customers' data without proper  
27 authorization. They further contend that these exhibits contain trade secrets and sensitive  
28 information about how the data of its customers is processed and stored. They point out that much

1 of the information customers store at Switch is either confidential or sensitive in nature, and that  
2 it is critical for Switch to be able to maintain the integrity of this information free from attacks.  
3 They also indicate that an attacker could use this information to identify the physical or digital  
4 location of a customer's data. Switch customers include government entities, hospitals, medical  
5 providers, and insurance carriers. Switch explains that even with redactions, the information can  
6 be used for social engineering enhanced attacks.

7 Plaintiff opposes the sealing of these records, incorporates the arguments it previously  
8 made in its Motion at ECF No. 255, and points to Switch's conclusory rationale for sealing which  
9 lacks specificity as to each exhibit. Plaintiff also argues that Switch previously conceded to the  
10 public filing of 34 out of the 47 documents it seeks to seal. Lastly, Plaintiff argues that Switch has  
11 not taken proper efforts to redact documents.

12 In its reply, Switch repeats many of the arguments made in its opening brief.

13 Generally, the public has a right to inspect and copy judicial records. *Kamakana v. City &*  
14 *Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). Such records are presumptively publicly  
15 accessible. *Id.* Consequently, a party seeking to seal a judicial record bears the burden of  
16 overcoming this strong presumption. *Id.* In the case of dispositive motions, the party seeking to  
17 seal the record must articulate compelling reasons supported by specific factual findings that  
18 outweigh the general history of access and the public policies favoring disclosure, such as the  
19 public interest in understanding the judicial process. *Id.* at 1178-79 (alteration and internal  
20 quotation marks and citations omitted). The Ninth Circuit has also held that the compelling  
21 reasons standard applies to other documents filed in cases if the documents are "more than  
22 tangentially related to the merits of the case." *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809  
23 F.3d 1092, 1101 (9th Cir. 2016).

24 Among the compelling reasons which may justify sealing a record are when such court  
25 files might become a vehicle for improper purposes, such as the use of records to gratify private  
26 spite, promote public scandal, circulate libelous statements, or release trade secrets. *Kamakana*,  
27 447 F.3d at 1179 (quotation omitted). However, avoiding a litigant's embarrassment,  
28

1 incrimination, or exposure to further litigation will not, without more, compel the court to seal its  
2 records. *Id.*

3 Here, while Switch has provided some information for its request, it has not sufficiently  
4 tied these reasons to each exhibit. Indeed, the Court is left trying to decipher how the rationale  
5 provided applies to each exhibit. While the need to seal certain exhibits may be evident, the Court  
6 will not do Switch's job of providing *specific facts* to seal each exhibit. As a result, the Court  
7 denies this motion without prejudice.

8 **Exhibit Nos. 2, 3, 6, 8, 9, 10, 11, 15, 18, 46, 47, 49, 50, 51, 53, 54, 55, 56, 57, 62, 77, 78, 91, 94,**  
9 **96, to Switch's Motion for Summary Judgment**

10 The exhibits in question for purposes of this motion are filed under seal at ECF Nos. 204-  
11 1, 204-2, 207-1, 207-2, and 209-1. The Court attaches a chart it has assembled in an attempt to  
12 rule on this motion. This will provide Switch a better indication of what the Court expects moving  
13 forward.

14 **Exhibit Nos. 1-7 to Switch's Zona Daubert Motion<sup>1</sup>**

15 The exhibits in question for purposes of this motion are sealed at ECF Nos. 215-1 and  
16 217-1. The Court attaches a chart it has assembled in an attempt to rule on this motion. This will  
17 provide Switch a better indication of what the Court expects moving forward. The Court also  
18 notes that some of Switch's heading requests that Exhibits 1-7 be sealed, while others request that  
19 Switch's Exhibits 5-7 be sealed. Accordingly, it is not clear to the Court what it is Switch seeks.

20 **Exhibit Nos. 1-7 to Switch's Cole Daubert Motion<sup>2</sup>**

21 The exhibits in question for purposes of this motion are sealed at ECF Nos. 217-1 and  
22 218-1. The Court again attaches a chart it has assembled in an attempt to rule on this motion. This  
23 will provide Switch a better indication of what the Court expects moving forward. The Court also  
24 notes that some of Switch's heading requests that Exhibits 1-7 be sealed, while others request that  
25 Switch's Exhibits 4-6 be sealed. Again, it is not clear to the Court what it is Switch seeks.

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27 <sup>1</sup> As mentioned earlier, what Switch designated as Exhibit Nos. 102, 104, 105 and 106 for  
28 purposes of sealing correspond to Exhibits 1, 3, 4 and 5 in Switch's Zona Daubert Motion.

<sup>2</sup> As mentioned earlier, what Switch designated for purposes of sealing as Exhibit No. 110  
corresponds to Exhibit 2 in Switch's Cole Daubert Motion.

1 **Exhibit Nos. 206, 221, and 817 to Plaintiff's Motion for Summary Judgment**

2       These exhibits were discussed at the hearing regarding ECF No. 361. At the hearing, the  
3 Court held that the attorney-client privilege had been waived but asked Switch to file a motion to  
4 seal if it wished to maintain those exhibits under seal. The Court notes that all of the exhibits  
5 discussed during the hearing may not be at play, as Switch seems to only seek the sealing of  
6 Exhibit Nos. 206, 211, and 817. The Court will address these exhibits at the time Switch files its  
7 new motion.

8 **Exhibit No. 116 to this Motion**

9       Switch has not filed this exhibit on the docket. Thus, the Court cannot make a  
10 determination about the need to seal Exhibit 116.

11       **IT IS THEREFORE ORDERED** that ECF No. 366 is denied. Switch will have 60 days  
12 to re-file this motion. If the Court does not receive such a motion, it will unseal the exhibits. The  
13 Court takes this opportunity to remind Switch that the Court is extremely busy and expects the  
14 moving party to clearly point out where in the docket each of the documents it seeks to seal is  
15 located (as opposed to expecting the Court do this). While the Court has taken the time to do this  
16 in this instance, moving forward, the Court will simply deny any motion with this same issue.

**Exhibits 2, 3, 6, 8, 9, 10, 11, 15, 18, 46, 47, 49, 50, 51, 53, 54, 55, 56, 57, 62, 77, 78, 91, 94, 96, to Switch's Motion for Summary Judgment**

		Specific reason for sealing	Why redaction is not possible
Exhibit 2	Portions of Mr. Ballard's deposition		
Exhibit 3	Portions of Mr. Johnston's deposition		
Exhibit 6	Portions of Mr. Morley's deposition		
Exhibit 8	Sales revenue for several of its customers and dates reflecting contract expiration		
Exhibit 9 & 10	e-mails re contract negotiations for one of its customers		
Exhibit 11	e-mail involving strategy by switch to		

	maintain certain customers		
Exhibit 15	Portions of Mr. Cole's deposition		
Exhibit 18	Portions of Mr. Mendenhall's deposition		
Exhibit 46	Portions of Mr. Brown's deposition		
Exhibit 47	Portions of Dr. Zona's deposition		
Exhibit 49	Portions of Mr. Ritter's deposition		
Exhibit 50	Portions of Mr. Castor's deposition		
Exhibit 51	Portions of Mr. Kempen's deposition		
Exhibit 53	Portions of Mr. Mayne's deposition		

1	Exhibit 54	Portions of Mr.		
2		Roy's deposition		
3	Exhibit 55 (filed	Customer list		
4	manually)			
5	Exhibit 56	Portions of Mr.		
6		Jamaca's		
7		deposition		
8	Exhibit 57	Portions of Mr.		
9		Leonard's		
10		deposition		
11	Exhibit 62	Portions of Mr.		
12		Draayer's		
13		deposition		
14	Exhibit 77	2012 e-mail		
15		regarding		
16		Cobalt's strategy		
17	Exhibit 78	e-mail regarding		
18		Switch business		
19		strategy		
20	Exhibit 91	Portions of Ms.		
21		Lanphier's		
22		deposition		
23	Exhibit 94	Portions of Mr.		
24		Brown's		
25		deposition		

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Exhibit 96	Portions of Mr. Stimmel's deposition		
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**Exhibit Nos. 1-7 to Switch's Zona Daubert Motion**

		Specific reason for sealing	Why redaction is not possible
Exhibit 1	Mr. Zona's entire deposition		
Exhibit 2	Expert Report of J. Douglas		
Exhibit 3	Portions of Mr. Morley's deposition		
Exhibit 4	Portions of Mr. Cole's deposition		
Exhibit 5	Portions of Mr. Castor's deposition		
Exhibit 6 & 7	On-line articles		

**Exhibit Nos. 1-7 to Switch's Cole Daubert Motion**

		Specific reason for sealing	Why redaction is not possible
Exhibit 1	Expert Report of G. Gabriel		
Exhibit 2	Mr. Cole's entire deposition		
Exhibit 3, 4 & 5	On-line articles		
Exhibit 6	Settlement agreement		
Exhibit 7	G. Gabriel's' Expert Reply Report		

DATED: November 10, 2020

BRENDA WEKSLER  
UNITED STATES MAGISTRATE JUDGE